

**SUBCHAPTER M : PRE-APPLICATION REVIEW
AND PERMIT PROCEDURES
§§335.391-335.393
Effective January 2, 1995**

§335.391. Pre-Application Review.

(a) Purpose. The commission recommends a pre-application review process in situations where opposition to an application is likely to exist. A pre-application review should serve to identify issues of concern; facilitate communication between a potential applicant and persons who would be affected by an application; and resolve as many points of conflict as possible prior to the submission of an application. A local review committee shall:

(1) Interact with the applicant in a structured manner during the pre-application review stage of the permitting process and, if necessary, during the technical review stage of the permitting process, to raise and attempt to resolve both technical and nontechnical issues of concern; and

(2) Produce a fact-finding report documenting resolved and unresolved issues and unanswered questions. The applicant shall submit this report to the commission with the applicant's permit application.

(b) Applicability. This subchapter applies to potential permit applicants who desire to enter into agreements with affected persons and/or identify issues of local concern prior to submission of an application for a new hazardous waste management facility (including injection wells used for the disposal of hazardous waste). This subchapter shall not apply to hazardous waste management facilities for which an application has been filed, or which has otherwise been authorized to operate, as of September 1, 1985. This subchapter shall also not apply to amendments to pending applications or to changes in waste storage or processing operations at existing sites at which waste management activities are already being conducted.

(c) Procedure.

(1) If a potential applicant decides to participate in a local review committee process, the potential applicant may so inform the persons listed in subparagraphs (A)-(C) of this paragraph, as soon as feasible after beginning informal discussions with the commission. To formally initiate the pre-application review process, the potential applicant shall file a notice of intent to file an application with the commission. Further, at the same time the potential applicant shall cause the notice to be published in a paper of general circulation in the county in which the facility is to be located. The form of this notice is specified in §335.392 of this title (relating to Notice of Intent To File a Permit Application). The potential applicant will, at the same time, send a copy of the notice by certified mail, return receipt requested, to the following persons:

(A) The appropriate mayor and county judge if the proposed facility is to be located within the corporate limits or extraterritorial jurisdiction of a city; or

(B) The appropriate county judge if the proposed facility is to be located within an unincorporated area of a county; and

(C) The appropriate regional council of government.

(2) The filing of the notice initiates the pre-application review process. The date of filing shall be the date the notice is received by the commission.

(3) Local review committees shall be composed of representatives of both local and regional interests.

(A) Size. A local review committee shall consist optimally of 12 individuals. However, by mutual agreement between the applicant and the persons appointing the committee, a larger committee to better represent all interest groups present in a community or a smaller committee for economic reasons may be appointed. However, the committee shall maintain a one to one ratio of regional appointments to local appointments.

(B) Appointments:

(i) If a proposed facility is to be located within the corporate limits or the extraterritorial jurisdiction of a city or town, the potential applicant shall ask the mayor of the city or town to make all local appointments.

(ii) If a proposed facility is to be located in an unincorporated area of a county, but within five miles of the corporate limits or extraterritorial limits of any city, the potential applicant shall ask the mayor of each affected city to appoint one member. The appropriate county judge shall appoint at least one member, if available, who lives within five miles of the proposed site. The county judge shall also appoint any remaining individuals necessary to complete local appointments to the committee.

(iii) If a proposed facility would not be within five miles of the corporate limits or the extraterritorial jurisdiction of a city, the potential applicant shall ask appropriate county judge to appoint at least one member, if available, who lives within five miles of the proposed site and as many other individuals from the county as are necessary to complete the local appointments.

(iv) Regional appointments shall be made by the appropriate regional council of government (COG) or another regional entity such as a special district or river authority designated by the COG. An attempt shall be made to make regional appointments from as many of the interest groups outlined in subclauses (I)-(VII) of this clause, as possible:

(I) organized environmental or public interest groups;

(II) citizen organizations active in environmental issues;

(III) industry, preferably, but not necessarily, individuals with expertise in waste management;

(IV) academic community, preferably, but not necessarily, individuals trained in a technical discipline related to waste management and/or public involvement;

(V) community or land use planning groups;

(VI) business groups preferably, but not necessarily individuals with experience related to the generation of waste; and

(VII) public health professionals.

(v) If any local official or regional entity has failed to make any appointments within 45 days after the notice of intent to file has been received by the commission, the committee will be abolished without harm to the applicant's ability to pursue the application.

(vi) Every effort should be made to appoint individuals who are open-minded, willing to participate in good faith, able to devote adequate time to participation, and respected in the community or region. The committee shall reflect the diversity of the community, including but not limited to the following factors: gender, age, race, economic status, and educational level.

(vii) Appointees shall not be employees or agents of the potential applicant.

(viii) An individual shall not serve on more than one local review committee at any one time.

(ix) The committee shall elect a chairperson who will preside over meetings.

(x) The committee shall be required to select and engage the services of a professional facilitator for the purpose of coordinating the activities of the committee and preparing the report.

(4) The local review committee shall meet within 21 days after all regional and local appointments have been made. The commission will provide manuals to committee members which will orient them as to what the committee's activities should be; i.e., the production of a report detailing issues resolved, issues unresolved, and unanswered questions.

(5) The pre-application review process shall continue for a maximum of 180 days unless it is shortened or lengthened by mutual agreement between the potential applicant and the local review committee. In addition, by mutual agreement the applicant and the committee may continue a dialogue for the purpose of addressing new concerns and changes to the draft permit.

(6) Individuals who serve on local review committees shall serve without compensation; however, reasonable expenses for travel may be provided by the applicant. The potential applicant shall provide resources to fund the facilitator and other expenses which may include clerical and technical assistance, meeting space, and/or other items which may be necessary to aid the committee in its work.

(d) The committee report.

(1) Any report produced by a local review committee set up under this section shall be submitted to the commission with an applicant's permit application. The executive director shall consider the report in any decision to recommend granting or denial of the permit application. The report may be offered by any party at a hearing on the application and admitted into evidence subject to applicable rules of evidence.

(2) The report shall not recommend approval or disapproval of the proposed facility. Rather, it shall describe the committee's work and summarize the committee's findings. The findings shall include issues resolved, issues unresolved, and unanswered questions.

§335.392. Notice of Intent to File a Permit Application.

The following appendix will be used for purposes of this subchapter.

Appendix I
Notice of Intent to File a Permit Application

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This form shall be submitted only in the event a potential applicant intends to initiate a pre-application review process as described in 30 TAC §335.391. Local officials designated to appoint a local review committee pursuant to 30 TAC §335.391 must do so within 45 days after the filing of this notice with the Texas Natural Resource Conservation Commission. For further information, contact the Texas Natural Resource Conservation Commission, Hazardous and Solid Waste Division, P. O. Box 13087, Capitol Station, Austin, Texas, 78711.

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(Potential Applicant Complete:)

Name: _____
City, County, Individual or Company

Individual Contact: _____

Mailing Address: _____

Type of Facility Proposed:

_____ Incinerator	_____ Landfill
_____ Transfer facility	_____ Land treatment
_____ Storage facility	_____ Surface impoundment
_____ Processing facility	_____ Waste pile
_____ Recycling facility	_____ Injection well
_____ Other	

Street Address or Location of Proposed Facility:

Site Located in:

County of _____ Corporate Limits or extraterritorial jurisdiction of _____
Within five miles of corporate limits or extraterritorial jurisdiction of city(s) of _____

(For Commission Use Only:)
Date Received:

§335.393. Award of Costs.

(a) Any person, other than the applicant, who has participated in the local review committee process pursuant to this chapter, may be awarded, by the commission, its reasonable costs or any part thereof for technical studies and reports and expert witnesses associated with the presentation of evidence at a public hearing on the permit application subsequent to the local review committee process. Such evidence must relate to issues raised by such person in the local review committee process but which are still unresolved at the time of the commencement of the hearing on the permit applications for a hazardous waste management facility. To be eligible for an award, such person shall file a motion for recovery of costs at the end of the evidentiary portion of the public hearing.

(b) In determining the appropriateness of such an award, the commission shall consider the following:

(1) Whether the evidence or analysis provided through such studies, reports, and witnesses is significant to the evaluation of the application;

(2) Whether the evidence or analysis would otherwise not have been provided in the proceeding; and

(3) Whether the local review committee was established in accordance with §§335.391-335.392 of this title (relating to Pre-Application Review; and Notice of Intent to File a Permit Application).

(c) The person seeking such an award shall have the burden of proof to demonstrate that the costs are reasonable and consistent with similar services performed in the area. The applicant shall have the opportunity to rebut such evidence. Costs awarded by the commission shall be taxed against the applicant. The total award granted to all such persons by the commission with respect to any particular application shall not exceed \$25,000.00. Judicial review of any award by the commission shall be pursuant to the substantial evidence rule as provided by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a).

(d) Except as provided in subsection (e) of this section, when an applicant has not entered into a local review committee process, the commission, in determining the appropriateness of an award of costs, shall waive any requirement that the person seeking an award of costs has participated in a local review committee process.

(e) If an applicant, after reasonable efforts to determine whether any local opposition exists to its proposed facility including, but not limited to, discussing the proposed facility with the county judge and other elected officials, does not enter into a local review committee process because of no apparent opposition or because a local review committee is not established despite the good faith efforts of the applicant, then such applicant shall not be subject to an award of costs pursuant to subsection (a) of this section.